SUPREME COURT, U.S.
FILED
OCT 12 2010
CLERK

No. 10-346

IN THE

Supreme Court of the United States

TRUDY GRIFFIN,

Petitioner,

v.

DARRELL HARDRICK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

JAMES C. CHARLES
KELI J. OLIVER
Counsel of Record
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY,
TENNESSEE
P.O. Box 196300
Nashville, Tennessee 37219
(615) 862-6341
keli.oliver@nashville.gov

Counsel for Respondent

232728

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

I. DOES THE EXISTENCE OF A DISSENTING OPINION IN A CASE INVOLVING VIDEO EVIDENCE CONSTITUTE MISAPPLICATION OF THIS COURT'S *SCOTT V. HARRIS* DECISION, WHICH ALSO CONTAINED A DISSENT?

II. SHOULD THIS COURT REVISIT ITS 2007 *SCOTT V. HARRIS* DECISION REGARDING THE MANNER IN WHICH COURTS VIEW VIDEO EVIDENCE AT SUMMARY JUDGMENT?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF APPENDICES	iii
TABLE OF CITED AUTHORITIES	iv
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	3
REASONS FOR DENYING THE PETITION	4
I. The Sixth Circuit Correctly Applied *Scott v. Harris*	4
A. A Dissenting Opinion Does Not Equate To Misapplication Of *Scott*, Which Contained Its Own Dissent	4
B. Adopting Griffin's Argument Would Result In Mandatory Reversal Of Summary Judgment When There Is A Dissent At The Appellate Level	8
II. This Court Has Already Decided The Manner In Which Courts May Use Video Evidence At Summary Judgment	9
CONCLUSION	10

TABLE OF APPENDICES

APPENDIX A — IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION 1a

APPENDIX B — IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION 7a

APPENDIX C — DVD 14a

TABLE OF CITED AUTHORITIES

Page

CASES

Scott v. Harris,
550 U.S. 372 (2007) ..... *passim*

STATUTES

Sup. Ct. R. 10 4

Sup. Ct. R. 10(a) 4

Sup. Ct. R. 10(c) 9

STATEMENT OF THE CASE

This case arises out of the detention of Petitioner Trudy Griffin ("Griffin") at the Criminal Justice Center ("CJC") in Nashville, Tennessee, on August 25, 2005, after her arrest for disorderly conduct and resisting arrest. (App. 1a ¶ 1). Respondent, Darrell Hardrick ("Hardrick"), a Sergeant working at the CJC at the time of the incident, adopts and incorporates by reference the recitation of the facts contained in the Opinion of the United States Court of Appeals for the Sixth Circuit ("Sixth Circuit"). (Pet. App. 2a-5a).

In addition, Hardrick must point out that Griffin has made a number of misstatements of the pertinent facts in her Petition. First, Griffin suggests to this Court that it is undisputed that Hardrick told her that "she was going to live in his hell" and that "she was his bitch" when he first approached her at the CJC nurses' station. (Pet. 3). However, Hardrick did not admit these "facts" at the summary judgment stage. Instead, Hardrick averred that these were not "material" facts in dispute for summary judgment purposes, since these alleged threats did not occur at the same time, or even immediately before, his leg-sweep of Griffin, and the circumstances surrounding the subsequent leg-sweep were shown on videotape. (App. 7a ¶ 1). The Sixth Circuit agreed that these alleged threats prior to Hardrick's use of force did not create a genuine issue of material fact "because the videotape shows that Griffin was still struggling with the officers at the time Hardrick employed the leg-sweep maneuver." (Pet. App. 12a). Based upon the events depicted on the videotape, "Hardrick had a reasonable basis to believe that further

force was necessary to control Griffin, even if he had earlier made the generalized threats against her." (*Id.* at 12a-13a).

Griffin also insists that she did not resist either officer after they attempted to escort her to her holding cell. (Pet. 3). The videotape blatantly contradicts this self-serving statement. The videotape shows Hardrick take hold of Griffin's arm, with Griffin attempting to pull away. (App. 14a,15:09:10); *see also* (Pet. App. 24a-25a). As he continues to hold her arm, Griffin forcibly resists and tries to push away from him. (App. 14a, 15:09:13); *see also* (Pet. App 25a). When Hardrick is joined by another officer, Sergeant Pamela Rutledge, Griffin continues to forcefully jerk her arms in an attempt to break free of the officers' grasps. (App. 14a 15:09:19-15:09:23); *see also* (Pet. App. 25a). It is at that point that the leg-sweep occurs. (*Id.)* As the Sixth Circuit pointed out: "Whether or not she felt that she had a good reason for walking away, Griffin was resisting Hardrick and Rutledge before Hardrick used the leg-sweep maneuver." (Pet. App. 13a).

Finally, Griffin insinuates that Hardrick intentionally caused Sergeant Rutledge to fall on Griffin's leg. (Pet. 3). As the Sixth Circuit noted, it was Sergeant Rutledge falling on Griffin, not Hardrick's leg-sweep maneuver, that was the actual force that broke Griffin's leg. Sergeant Rutledge's fall was not some calculated maneuver, but instead "an unfortunate accident." (Pet. App. 12a). Griffin did not file suit against Sergeant Rutledge.

The United States District Court for the Middle District of Tennessee ("District Court") granted Hardrick summary judgment on Griffin's Fourteenth Amendment excessive force claim and on her Tennessee state law battery claim. (*Id.* at 21a-35a). In reaching its decision, the District Court reviewed the videotape of the use of force at issue and determined that no reasonable jury could conclude that Hardrick was acting wantonly, with the intent to inflict pain, at the time that he performed the leg-sweep on Griffin. (*Id.* at 32a). Griffin appealed the District Court's ruling only as to her Fourteenth Amendment claim, and the Sixth Circuit affirmed. (*Id.* at 1a-15a). The Sixth Circuit then denied Griffin's request for rehearing *en banc*. (*Id.* at 36a-37a).

SUMMARY OF ARGUMENT

Griffin leads off her Petition by asserting that the Sixth Circuit's decision contradicts this Court's holding in *Scott v. Harris*, 550 U.S. 372 (2007). Nothing could be further from the truth. The Sixth Circuit applied this Court's teachings in *Scott* and determined that, based upon the video evidence, no reasonable juror could find that Hardrick had used excessive force on Griffin. Griffin's reliance on the fact that there was a dissenting opinion as support for her argument that the Sixth Circuit incorrectly applied *Scott v. Harris* is misplaced, given that the *Scott* opinion itself contained a dissent from Justice Stevens, who interpreted the videotape in question differently than the rest of this Honorable Court. The mere presence of a dissenting opinion does not constitute a misapplication of *Scott*. Moreover, regardless of the type of evidence at issue, one judge's

perception that there is a genuine issue of material fact does not mandate automatic reversal of summary judgment when that perception is not shared by the other members of the appellate panel.

Griffin also argues that this case presents an important issue of federal law given the increasing prevalence of video evidence in civil rights actions. While it is certainly true that such evidence is becoming the norm, this Court has already recognized as much and has made its decision as to the role that video evidence should play at the summary judgment stage. This Court addressed that very issue in 2007 in *Scott v. Harris*, and there is no legitimate reason to re-visit the principles of that well-reasoned opinion a mere three years later.

REASONS FOR DENYING THE PETITION

I. The Sixth Circuit Correctly Applied *Scott v. Harris*.

A. A Dissenting Opinion Does Not Equate To Misapplication Of *Scott*, Which Contained Its Own Dissent.

This Court has unequivocally stated that "[a] petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. Moreover, this Court has identified one example of such a compelling situation as follows: "a United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court. . ." Sup. Ct. R. 10(a). In this case, however, the Sixth Circuit correctly applied this Court's precedent. Accordingly, review should be denied.

In *Scott v. Harris*, this Court ruled that, when a case involves an accurate and unaltered videotape, a court deciding summary judgment must view the facts in the light depicted by that videotape, even if it contradicts one party's version of events. 550 U.S. at 378-81. The Court also stated that "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." 550 U.S. at 380.

The Sixth Circuit's Opinion in this case was in perfect harmony with *Scott*. While it is impossible to expect every individual who sees a videotape to interpret it in an identical manner, this does not mean that federal judges should be precluded from viewing videotapes of incidents and determining what those videotapes actually show. And if those videotapes contradict a plaintiff's version of events, a judge is not required to abandon common sense and ignore his or her own observations merely because a non-moving party is entitled to have facts interpreted in the light most favorable to her at the summary judgment stage. *Scott v. Harris* stands for these very tenets, and the Sixth Circuit properly applied this Court's directives in affirming summary judgment in Hardrick's favor.

Here, the videotape depicts the incident underlying Griffin's excessive force claim and shows the following: Hardrick approaches Griffin, who is at the nurses' station at the CJC, and attempts to speak with her. (App. 14a, 15:08-45-15:09:01). Griffin admits that she had been talking to the nurse for several minutes and that she

was speaking to the nurse in a raised voice. (App. 2a at ¶ 4).

Griffin walks away from Hardrick, and he takes her arm; Griffin attempts to jerk her arm away; another officer takes hold of Griffin's other arm and, after a few seconds of Griffin struggling with them, they begin to try to escort her down the hall; Griffin resists their attempts to escort her down the hall, and Hardrick executes a leg-sweep maneuver to take her to the ground; Sergeant Rutledge then accidentally falls on Griffin's leg. (App. 14a, 15:09:10-15:09:23).

The Sixth Circuit viewed the videotape and found that "the video clearly shows Griffin resisting the officers' efforts to lead her down the hallway and her efforts to break away from them." (Pet. App. 13a). Based upon the facts shown on the videotape, the Sixth Circuit ruled that no reasonable jury could find that Hardrick's actions constituted excessive force under the Fourteenth Amendment. Accordingly, it affirmed Hardrick's entitlement to summary judgment. (*Id.*)

One judge sitting on the Sixth Circuit panel dissented, however. The dissenting judge indicated that she would have reversed the District Court's grant of summary judgment to Hardrick because she disagreed as to whether the videotape showed that "Griffin was struggling with the officers to the extent that no reasonable juror could conclude that Hardrick acted wantonly and maliciously in performing the takedown." (*Id.* at 17a-18a).

Griffin argues that the existence of this dissent establishes that the Sixth Circuit Opinion conflicts with *Scott v. Harris*. Griffin apparently overlooks the fact that *Scott* itself contained a dissent in which one Justice – Justice Stevens – interpreted a videotape differently than the rest of this Court. Indeed, there was a wide discrepancy between the majority's and Justice Stevens' interpretations of the events depicted in the *Scott* videotape. While the majority opinion characterized the events as "resemble[ing] a Hollywood-style car chase of the most frightening sort," 550 U.S. at 380, Justice Stevens found the videotape much less disturbing, noting that "[t]his is hardly the stuff of Hollywood. To the contrary, the video does not reveal any incidents that could even remotely be characterized as 'close calls.'" 550 U.S. at 392. The majority opinion pointed out Justice Stevens' contrary interpretation of the videotape, but instead of ruling that such a different viewpoint precluded summary judgment, this Court stated that it was "happy to allow the video to speak for itself." 550 U.S. at 379, n. 5.

The conflicting interpretations of the *Scott* videotape are so divergent that it almost appears as if Justice Stevens was watching an entirely different videotape than the rest of this Honorable Court. And with this as the backdrop of its decision, this Court nonetheless ruled that Deputy Timothy Scott had acted reasonably as a matter of law during his high-speed pursuit of Victor Harris. If video evidence susceptible to such different interpretations as those in *Scott* can be used to grant summary judgment to an officer, certainly the same is true of the videotape in this case, where the only real interpretative contention is the degree to which Griffin

was struggling against the correctional officers when Hardrick executed a leg-sweep maneuver. (Pet. App. 13a, 17a-18a).

As in *Scott v. Harris*, the Sixth Circuit here ruled that the video evidence, in effect, "spoke for itself." And as was the case in *Scott*, one member of the panel had a different interpretation of what the videotape showed. But there is no reason for this Court to revisit *Scott* to determine whether an appellate judge's dissenting opinion somehow changes the way that video evidence can be used at the summary judgment stage, since *Scott* itself contained a similar dissent.

B. Adopting Griffin's Argument Would Result In Mandatory Reversal Of Summary Judgment When There Is A Dissent At The Appellate Level.

Further, taking Griffin's argument to its logical extension, a District Court is automatically incorrect in granting summary judgment every time a Court of Appeals opinion regarding that decision contains a dissent, no matter what kind of evidence is involved. After all, Griffin is arguing that, since one federal judge viewed the facts in a different light than others, summary judgment was incorrect as a matter of law. Quite candidly, this is why appellate decisions are made by panels.

The appellate system takes into account the fact that different individuals can analyze issues and facts in a different manner, even when all of those individuals are trained and respected legal minds. Clearly, a less than

unanimous appellate decision as to whether summary judgment was appropriate does not merit mandatory reversal, even if a dissenting judge sees genuine issues of material fact where her colleagues have seen none. Griffin's arguments to the contrary are wholly without merit, and this Court should deny review of her Petition.

II. This Court Has Already Decided The Manner In Which Courts May Use Video Evidence At Summary Judgment.

In addition to a situation where a Court of Appeals has decided a case contrary to this Court's precedent, another example of when a petition for writ of certiorari may be granted is when it addresses "an important question of federal law that has not been, but should be settled by this Court . . . " Sup. Ct. R. 10(c). The present case involves no such "important question of federal law" that has yet to be settled by this Court. This Court has already ruled upon the manner in which video evidence can be used at the summary judgment stage. And this Court has already ruled that the reasonableness of an officer's actions is a question of law, not fact. *Scott v. Harris*, 550 U.S. at 381, n. 8. The Court addressed these issues thoroughly in *Scott v. Harris*, decided a mere 3 years ago.

This case presents a situation similar to that of *Scott v. Harris* in terms of the video evidence, with only slight variations. If a dissent in a case involving video evidence meant that summary judgment was inappropriate as a matter of law, this Court presumably would have reached a different decision in *Scott v. Harris*, given Justice Stevens' dissenting interpretation of the

videotape in that case. Griffin simply wants this Court to act as another set of eyes to examine the video evidence here and pass judgment on what it shows. That is hardly a compelling reason for review, and it could lead every plaintiff who does not like a Court of Appeals' interpretation of video evidence to believe that he has a right to have this Court second-guess that appellate panel's observations.

This Court has established federal law on the role of video evidence at the summary judgment stage of litigation. Granting review in this case would only serve to unnecessarily complicate a body of law that has already been settled.

CONCLUSION

This case is an unremarkable use of force case, with the only added component being the existence of a videotape. This Court has already addressed that situation in *Scott v. Harris* and has delineated the way that courts should view video evidence at the summary judgment stage of litigation. *Scott v. Harris* contained one dissenting opinion regarding what was shown on the videotape in question. The same is true of the Sixth Circuit Opinion in this case. The existence of a dissenting opinion does not constitute a misapplication of *Scott v. Harris*, since *Scott* itself was decided with the backdrop of Justice Stevens' dissent. Because this case does not present a compelling reason for review, Griffin's Petition should be denied.

Respectfully submitted,

James C. Charles
Keli J. Oliver
Counsel of Record
Metropolitan Government of
Nashville and Davidson County,
Tennessee
P.O. Box 196300
Nashville, Tennessee 37219
(615) 862-6341
keli.oliver@nashville.gov

Counsel for Respondent

APPENDIX

APPENDIX A — IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION

TRUDY GRIFFIN,

Plaintiff,

v.

DARRELL HARDRICK, Individually

Defendant.

Civil No. 3:08-CV-828
Judge Trauger
JURY DEMAND

DEFENDANT'S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

1. On August 20, 2005, Plaintiff Trudy Griffin ("Plaintiff') was arrested for disorderly conduct and resisting arrest. *See* Plaintiff 's Response to Defendant's Interrogatory No.7, attached to Defendant's Motion as Exhibit A.

RESPONSE:

Agreed.

2. Plaintiff was transported to the Davidson County Criminal Justice Center following her arrest. *See*

Appendix A

Deposition of Trudy Griffin ("Griffin Depo."), relevant portions attached to Defendant's Motion as Exhibit B, at pp. 56-57.

RESPONSE:

Agreed.

3. While in a cell at the criminal justice center, Plaintiff requested that she be allowed to go to the nurses' station. *Id.* at p. 62. The officers opened the cell door and Plaintiff went down the hall to talk to the nurse. *rd.* at pp. 62-63. Plaintiff complained to the nurse about her back and her arms. *rd.* at p. 64.

RESPONSE:

Agreed.

4. Plaintiff demanded to be transported to Summit Hospital. *rd.* at p. 64. The nurse explained that she could not do so and Plaintiff raised her voice to the nurse. Plaintiff talked to the nurse for several minutes. *rd.* at pp. 65-66.

RESPONSE:

Agreed.

5. Defendant Darrell Hardrick, a corrections officer with the Davidson County Sheriff's Office, encountered

Plaintiff at the end of his shift. *See* Deposition of Darrell Hardrick ("Hardrick Depo."), relevant portions attached to Defendant's Motion as Exhibit C, at p. 9. He was on duty as the sergeant over the booking area on August 20, 2005. *rd.* at p. 6.

RESPONSE:

Agreed.

6. Hardrick observed Plaintiff acting in a non-compliant manner with regard to the instructions she received from the nurse. Plaintiff walked away from Hardrick when he attempted to speak to her about the situation. *rd.* at pp. 9-10.

RESPONSE:

Agreed.

7. Plaintiff pulled her arm away from Hardrick when he first took hold of it. *Id.* at pp.72-73.

RESPONSE:

Agreed.

Plaintiff told Hardrick to, "watch her arms" because they hurt from being bruised earlier. (Depo. Griffin, Exhibit A, pp. 72-73)

8. Hardrick asked a female officer, Sgt. Rutledge, to assist him with Plaintiff. Griffin Depo. at pp. 71-72. Sgt. Rutledge grabbed Plaintiff's left arm, and Plaintiff pulled her left arm away. *Id.* at p. 74.

RESPONSE:

Denied as stated. Plaintiff denies she pulled her left arm way from Officer Rutledge. Plaintiff testified she only did a "little bit" because her arms were "on fire" from bruises. (*Id.* p. 74)

9. Hardrick employed the takedown maneuver to get Plaintiff to the ground after she had acted aggressively toward him and had attempted to jerk away. Hardrick Depo. at p. 10.

RESPONSE:

See attached.

10. Davidson County Sheriff's Office deputies are taught that a "two in one escort" accompanied by a trip takedown is appropriate when there is "[a]ctive resistance where the subject has had options to comply and [has] obviously not." Deposition of Subject Control Instructor Kevin Johnson ("Johnson Depo."), relevant portions attached to Defendant's Motion as Exhibit D, at p. 36.

RESPONSE:

Appendix A

Admitted for the purpose of Summary Judgment.

Response to No. 9:

Denied.

Plaintiff was talking to Hardrick at the Nurse's Station. Plaintiff walked away from Hardrick after he threatened her by saying "she was going to live in his hell. .. "Plaintiff walked away from Hardrick to go to a holding cell. Hardrick grabbed Plaintiff's arms. Plaintiff told him her arm hurt and she pulled away. Officer Rutledge then took a hold of Plaintiff's left arm. The officers were leading her down the hall. (Answer to Amended Complaint, paragraph 2.1. RE No. _____) The Plaintiff was not resisting, was not acting aggressively and was not struggling. As they pushed her down the hall she fell forward a little bit. Hardrick then tripped her causing her to fall and Officer Rutledge to fall on top of the Plaintiff crushing her tibia (*rd.* pp. 70-75, Video Tape at 15:15.09, Defendant Ex. E)

11. The takedown took place in the hallway near the nurse's station in the jail intake area. *See* Affidavit of Constance Taite ("Taite Aff.") filed contemporaneously herewith, at ¶ 6. That hallway was the only passage way between the booking room and the jail intake area. Taite

Aff. at ¶ 7. The officers then moved Plaintiff into a holding cell. Griffin Depo. at p. 82.

RESPONSE:

Admitted.

12. Plaintiff testified that it was Sgt. Rutledge who "crushed" her leg into the ground and bent Plaintiff's arm back "so far that the bone was popping out" of Plaintiff's skin. Griffin Depo. at pp. 92-93 and p. 83, respectively.

RESPONSE:

Agreed. Officer Rutledge fell on top of the Plaintiff breaking her tibia. (Defendant Exhibit E at 15:15. Ex. _____)

The Plaintiff's arms were not broken.

Respectfully submitted,

THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
SUE B. CAIN (#9380) Director of Law

s/Keli J. Oliver
Keli J. Oliver (#21023)
Allison L. Bussell (#23538)
Assistant Metropolitan Attorneys
P.O. Box 196300
Nashville, Tennessee 37219
(615) 862-6341

APPENDIX B — IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

Civil No. 3:08-CV-828
Judge Trauger
JURY DEMAND

TRUDY GRIFFIN,

Plaintiff,

v.

DARRELL HARDRICK, Individually

Defendant.

DEFENDANT'S RESPONSE TO PLAINTIFF'S STATEMENT OF MATERIAL FACTS IN DISPUTE

1. Hardrick threatened Griffin after hearing her yelling to the nurse through the Plexiglas window at the Criminal Justice Center's nurses' station (Depo. Griffin p. 67:8-14)

RESPONSE: This is not a fact that is material to the disposition of Defendant's summary judgment motion. Any words spoken by Hardrick to Griffin prior to the takedown maneuver, which is depicted on the videotape filed as Exhibit E in support of Defendant's motion, are not material to the issue of whether the takedown maneuver itself constituted willful and wanton infliction of pain in violation of Griffin's constitutional rights.

2. Griffin walked away from Hardrick to go back to her cell. Hardrick grabbed her arm and she pulled it back because it hurt her. (*Id.* P. 73: 7-14)

RESPONSE: This is not a fact that is material to the disposition of Defendant's summary judgment motion. The reasons that Griffin may have pulled her arm away from Defendant are not material to the issue of whether the takedown employed by Defendant constituted willful and wanton infliction of pain in violation of Griffin's constitutional rights.

3. Hardrick then grabbed Griffin's right arm and another deputy, Pamela Rutledge, grabbed her left arm. Griffin told both officers to watch her arms because they were bruised. (*Id.* P. 72: 14-22)

RESPONSE: This is not a material fact in dispute. It is admitted that there was an officer on either side of Griffin escorting her down the hall. What Griffin may have told the officers about her arms is not material to the issue of whether the takedown employed by Defendant constituted willful and wanton infliction of pain in violation of Griffin's constitutional rights. Further, the actions of non-defendant Pamela Rutledge are not relevant to Plaintiff's claims against Defendant.

4. As soon as both arms were secured by the officers Griffin did not resist nor did she struggle to free her arms. She only complained that the officers were hurting her. (*Id.* P. 72: 19-22; p. 73: 18-25; p. 74: 1-23) (*See*, Exhibit 2, Depo. Hardrick)

RESPONSE: There is no support for this "fact" in Exhibit 2. In fact, Defendant clearly testified that Griffin was being noncompliant. Exhibit 2 at p. 12. Thus, this "fact" should be stricken. Further, what Griffin may have told the officers about her arms is not material to the issue of whether the takedown employed by Defendant constituted willful and wanton infliction of pain in violation of Griffin's constitutional rights.

5. The officers were escorting her down the hall. She was not attempting to get away from them. (Answer to Complaint, paragraph 2.1) Instead, Griffin was slightly pushed by Hardrick. (Depo. Griffin p. 76: 8-10)

RESPONSE: There is no support for this "fact" in the Answer despite Plaintiff's assertion to the contrary. In fact, the Answer specifically states that Plaintiff was actively resisting the officers. Accordingly, this fact should be stricken. Further, Griffin's characterization of having been "slightly pushed" by Hardrick is not a disputed material fact, as the videotape of the incident speaks for itself, and the issue of whether Griffin was initially "slightly pushed" as she was escorted down the hall is not material to the issue of whether the takedown employed by Defendant constituted willful and wanton infliction of pain in violation of Griffin's constitutional rights.

6. As she was being escorted down the hall, Griffin turned her head to say something to Hardrick. Instead of responding to her, he tripped her. (Depo. Griffin p. 76:11-18; p. 80: 4-10) (Exhibit 2, Depo. Hardrick)

RESPONSE: There is no support for this "fact" in Exhibit 2. In fact, Defendant clearly testified that Griffin was being noncompliant. Exhibit 2 at p. 12. Further, any words Griffin may have said or attempted to say are not material to the issue of whether the takedown employed by Defendant constituted willful and wanton infliction of pain in violation of Griffin's constitutional rights.

7. The trip caught the other deputy completely off guard. (Exhibit 2, Depo. Hardrick)

RESPONSE: There is no support for this "fact" in Exhibit 2. Exhibit 2 contains no testimony stating or even indicating that the trip "caught the other deputy completely off guard." Thus, this fact should be stricken. Further, the actions or reactions of non-defendant Pamela Rutledge are not relevant to Plaintiff's claims against Defendant.

8. Griffin fell to the hard concrete floor of the Criminal Justice Center hallway completely uncontrolled by Hardrick and Rutledge. (*Id.*)

RESPONSE: There is no support for this "fact" in Exhibit 2. Exhibit 2 contains no testimony stating or even indicating that "Griffin fell to the hard concrete floor of the Criminal Justice Center hallway completely uncontrolled by Hardrick and Rutledge."

Thus, this fact should be stricken.

Appendix B

9. Rutledge was so caught off guard by Hardrick's trip she fell on top of Griffin crushing her left tibia just below the knee. (Exhibit 1, ER records) (Exhibit 2, Depo. Hardrick, Depo. Limbird, p. 9: 1-21) Griffin's fall was so uncontrolled that she hit her head on the floor. (Depo. Griffin p. 83: 8-10)

RESPONSE: The actions or reactions of non-defendant Pamela Rutledge are not relevant to Plaintiff's claims against Defendant; thus, this is not a material fact in dispute. Further, Defendant does not dispute that Griffin's tibia was fractured.

10. The purpose for Hardrick and Rutledge holding each of Griffin's arms while they escorted her down the hall was to control her and in the process lessen any possible injuries to her. (Depo. Johnson, p. 37: 22-24; p. 38: 1-2)

RESPONSE: This is not a material fact in dispute.

11. Two officers escorting a subject are not supposed to let go of a subject who is being taken down because letting go of subject can cause injury. (*Id.* P. 38: 8-14)

RESPONSE: This is not a material fact in dispute.

12. If a suspect is tripped each officer is supposed to keep hold of the suspect's arm making the bring down a controlled bringing down. (*Id.* p. 38: 17-25; p. 39:23)

RESPONSE: This is not a material fact in dispute.

13. Griffin was not resisting her escort to *any* degree that justified her being tripped. (Depo. Griffin p. 72: 19-22; p. 73: 18-25; p. 74: 1-23, Exhibit 2, Depo. Hardrick)

RESPONSE: This states a legal conclusion and thus is not a material fact in dispute for purposes of summary judgment. Further, Exhibit 2 contains absolutely no testimony to support this "fact." Exhibit 2 reflects Defendant's testimony that Plaintiff was being noncompliant and that the takedown was initiated for that reason. Exhibit 2 at p. 12.

14. The tripping of Ms. Griffin was not controlled thus causing her injuries. (Exhibit 2, Depo. Hardrick)

RESPONSE: There is no support for this "fact" in Exhibit 2. Exhibit 2 contains no testimony stating or even indicating that the tripping of Griffin was "not controlled." Thus, it should be stricken.

15. After she fell to the floor, Griffin complained that her leg as broken, but an employee told her "her leg wasn't broke" and dragged her to another room. (Depo. Griffin p. 8: 14-24)

RESPONSE: This is not a material fact in dispute for purposes of summary judgment. What Griffin said to any other employees at the Criminal Justice Center and the actions of any Criminal Justice Center

employees other than Defendant are irrelevant to the issue of whether Defendant himself willfully and wantonly inflicted pain upon Griffin in violation of Griffin's constitutional rights. Thus, it should not be considered.

Respectfully submitted,
THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
SUE B. CAIN (#9380) Director of Law

s/Keli J. Oliver
Keli J. Oliver (#21023)
Allison L. Bussell (#23538)
Assistant Metropolitan Attorneys
P.O. Box 196300
Nashville, Tennessee 37219
(615) 862-6341

APPENDIX C — DVD

See attached on back cover.